

# PART 32

## CONTRACT FINANCING

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### 32.000 Scope of part.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
***** (e) *****; and (f) ***** -	***** (e) *****; (f) *****; (g) Financing of purchases of commercial items; and (h) Performance-based payments. [FAC 90-33]

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### 32.001 Definitions.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
*****	***** <i>Customary contract financing</i> means that financing deemed by an agency to be available for routine use by contracting officers. Most customary contract financing arrangements should be usable by contracting officers without specific reviews or approvals by higher management. <i>Unusual contract financing</i> means any financing not deemed customary contract financing by the agency. Unusual contract financing is financing that is legal and proper under applicable laws, but that the agency has not authorized contracting officers to use without specific reviews or approvals by higher management. [FAC 90-33]

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### 32.002 Applicability of subparts. [FAC 90-33]

- (a) The following sections and subparts of this part are applicable to all purchases subject to Part 32:
- (1) Sections 32.000 through 32.005.
  - (2) Subpart 32.3, Loan Guarantees for Defense Production.
  - (3) Subpart 32.6, Contract Debts.
  - (4) Subpart 32.7, Contract Funding.
  - (5) Subpart 32.8, Assignment of Claims.
  - (6) Subpart 32.9, Prompt Payment.
- (b) Subpart 32.2, Commercial Item Purchase Financing, is applicable only to purchases of commercial items under authority of Part 12.

(c) The following subparts of this part are applicable to all purchases made under any authority other than Part 12:

- (1) Subpart 32.1, Non-Commercial Item Purchase Financing.
- (2) Subpart 32.4, Advance Payments For Non-Commercial Items.
- (3) Subpart 32.5, Progress Payments Based on Costs.
- (4) Subpart 32.10, Performance-Based Payments.

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**32.003 Simplified acquisition procedures financing.** [FAC 90-33]

Unless agency regulations otherwise permit, contract financing shall not be provided for purchases made under the authority of Part 13.

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**32.004 Contract performance in foreign countries.** [FAC 90-33]

The enforceability of contract provisions for security of Government financing in a foreign jurisdiction is dependent upon local law and procedure. Prior to providing contract financing where foreign jurisdictions may become involved, the contracting officer shall ensure the Government's security is enforceable. This may require the provision of additional or different security than that normally provided for in the standard contract clauses.

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**32.005 Consideration for contract financing.** [FAC 90-33]

(a) *Requirement.* When a contract financing clause is included at the inception of a contract, there shall be no separate consideration for the contract financing clause. The value of the contract financing to the contractor is expected to be reflected in either (1) a bid or negotiated price that will be lower than such price would have been in the absence of the contract financing, or (2) contract terms and conditions, other than price, that are more beneficial to the Government than they would have been in the absence of the contract financing. Adequate new consideration is required for changes to, or the addition of, contract financing after award.

(b) *Amount of new consideration.* The contractor may provide new consideration by monetary or nonmonetary means, provided the value is adequate. The fair and reasonable consideration should approximate the amount by which the price would have been less had the contract financing terms been contained in the initial contract. In the absence of definite information on this point, the contracting officer should apply the following criteria in evaluating whether the proposed new consideration is adequate:

(1) The value to the contractor of the anticipated amount and duration of the contract financing at the imputed financial costs of the equivalent working capital.

(2) The estimated profit rate to be earned through contract performance.

(c) *Interest.* Except as provided in Subpart 32.4, Advance Payments for Non-Commercial Items, the contract shall not provide for any other type of specific charges, such as interest, for contract financing.

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## **32.006 Reduction or suspension of contract payments upon finding of fraud.**

### **32.006-1 General.**

(a) Under Title 10 of the United States Code, the statutory authority implemented by this section is available only to the Department of Defense; this statutory authority is not available to the National Aeronautics and Space Administration or the United States Coast Guard. Under the Federal Property and Administrative Services Act (41 U.S.C. 255), this statutory authority is available to all agencies subject to that Act.

(b) 10 U.S.C. 2307(h)(2) and 41 U.S.C. 255, as amended by the Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355, provide for a reduction or suspension of further payments to a contractor when the agency head determines there is substantial evidence that the contractor's request for advance, partial, or progress payments is based on fraud. This authority does not apply to commercial interim payments under Subpart 32.2, or performance-based payments under Subpart 32.10.

(c) The agency head may not delegate his or her responsibilities under these statutes below Level IV of the Executive Schedule.

(d) Authority to reduce or suspend payments under these statutes is in addition to other Government rights, remedies, and procedures.

(e) In accordance with these statutes, agency head determinations and decisions under this section may be made for an individual contract or any group of contracts affected by the fraud.

### **32.006-2 Definitions.**

As used in this section—

*Remedy coordination official* means the person or entity in the agency who coordinates within that agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities. (See 10 U.S.C. 2307(h)(10) and 41 U.S.C. 255(g)(9).)

*Substantial evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

### **32.006-3 Responsibilities.**

(a) Agencies shall establish appropriate procedures to implement the policies and procedures of this section.

(b) Government personnel shall report suspected fraud related to advance, partial, or progress payments in accordance with agency regulations.

### **32.006-4 Procedures.**

(a) In any case in which an agency's remedy coordination official finds substantial evidence that a contractor's request for advance, partial, or progress payments under a contract awarded by that agency is based on fraud, the remedy coordination official shall recommend that the agency head reduce or suspend further payments to the contractor. The remedy coordination official shall submit to the agency head a written report setting forth the remedy coordination official's findings that support each recommendation.

(b) Upon receiving a recommendation from the remedy coordination official under paragraph (a) of this subsection, the agency head shall determine whether substantial evidence exists that the request for payment under a contract is based on fraud.

(c) If the agency head determines that substantial evidence exists, the agency head may reduce or suspend further payments to the contractor under the affected contract(s). Such reduction or suspension shall be reasonably commensurate with the anticipated loss to the Government resulting from the fraud.

(d) In determining whether to reduce or suspend further payment(s), as a minimum, the agency head shall consider—

- (1) A recommendation from investigating officers that disclosure of the allegations of fraud to the contractor may compromise an ongoing investigation;
  - (2) The anticipated loss to the Government as a result of the fraud;
  - (3) The contractor's overall financial condition and ability to continue performance if payments are reduced or suspended;
  - (4) The contractor's essentiality to the national defense, or to the execution of the agency's official business; and
  - (5) Assessment of all documentation concerning the alleged fraud, including documentation submitted by the contractor in its response to the notice required by paragraph (e) of this subsection.
- (e) Before making a decision to reduce or suspend further payments, the agency head shall, in accordance with agency procedures--
- (1) Notify the contractor in writing of the action proposed by the remedy coordination official and the reasons therefor (such notice must be sufficiently specific to permit the contractor to collect and present evidence addressing the aforesaid reasons); and
  - (2) Provide the contractor an opportunity to submit information within a reasonable time, in response to the action proposed by the remedy coordination official.
- (f) When more than one agency has contracts affected by the fraud, the agencies shall consider designating one agency as the lead agency for making the determination and decision.
- (g) The agency shall retain in its files the written justification for each—
- (1) Decision of the agency head whether to reduce or suspend further payments; and
  - (2) Recommendation received by an agency head in connection with such decision.
- (h) Not later than 180 calendar days after the date of the reduction or suspension action, the remedy coordination official shall—
- (1) Review the agency head's determination on which the reduction or suspension decision is based; and
  - (2) Transmit a recommendation to the agency head as to whether the reduction or suspension should continue.

#### **32.006-5 Reporting.**

- (a) In accordance with 41 U.S.C. 255, the head of an agency, other than the Department of Defense, shall prepare a report for each fiscal year in which a recommendation has been received pursuant to 32.006-4(a). Reports within the Department of Defense shall be prepared in accordance with 10 U.S.C. 2307.
- (b) In accordance with 41 U.S.C. 255 and 10 U.S.C. 2307, each report shall contain—
  - (1) Each recommendation made by the remedy coordination official;
  - (2) The actions taken on the recommendation(s), with reasons for such actions; and
  - (3) An assessment of the effects of each action on the Government.

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### **SUBPART 32.1—GENERAL**

#### **SUBPART 32.1—NON-COMMERCIAL ITEM PURCHASE FINANCING**

##### **32.100 Scope of subpart.**

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
This subpart provides policies and procedures applicable to the general subject of contract financing and payment.	This subpart provides policies and procedures applicable to contract financing and payment <b>for any purchases other than purchases of commercial items in accordance with Part 12.</b> [FAC 90-33]

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### 32.101 Authority.

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#### *FAR as of FAC 90-25*

The basic authority for the contract financing described in this part is contained in section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255), section 2307 of the Armed Services Procurement Act (10 U.S.C. 2307), and Title III of the Defense Production Act of 1950 (50 U.S.C. App. 2091).

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#### *FAR as revised*

The basic authority for the contract financing described in this part is contained in section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255), section 2307 of the Armed Services Procurement Act (10 U.S.C. 2307), and Title III of the Defense Production Act of 1950 (50 U.S.C. App. 2091) , **as amended.** [FAC 90-33]

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### 32.102 Description of contract financing methods.

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#### *FAR as of FAC 90-25*

(a) Advance payments are advances of money by the Government to a prime contractor before, in anticipation of, and for the purpose of complete performance under one or more contracts. They are expected to be liquidated from payments due to the contractor incident to performance of the contracts. Since they are not measured by performance, they differ from partial, progress, or other payments based on the performance or partial performance of a contract. Advance payments may be made to prime contractors for the purpose of making ~~sub~~advances to subcontractors.

(b) Progress payments based on costs are made on the basis of costs incurred by the contractor as work progresses under the contract. This form of contract financing does not include—

- (1) \* \* \* \* \* ;
- (2) \* \* \* \* \* ; ~~or~~
- (3) \* \* \* \* \* .

\* \* \* \* \*

(d) Partial payments for accepted supplies and services that are only a part of the contract requirements are authorized under section 305 of the Federal Property and Administrative Services Act (41 U.S.C. 255). Although partial payments are generally treated as a method of payment and not as a method of contract financing, using partial payments can assist contractors to participate in Government contracts without, or with minimal, contract financing. When appropriate, agencies shall use this payment method.

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#### *FAR as revised*

(a) Advance payments are advances of money by the Government to a prime contractor before, in anticipation of, and for the purpose of complete performance under one or more contracts. They are expected to be liquidated from payments due to the contractor incident to performance of the contracts. Since they are not measured by performance, they differ from partial, progress, or other payments based on the performance or partial performance of a contract. Advance payments may be made to prime contractors for the purpose of making advances to subcontractors.

(b) Progress payments based on costs are made on the basis of costs incurred by the contractor as work progresses under the contract. This form of contract financing does not include—

- (1) \* \* \* \* \* ;
- (2) \* \* \* \* \* ;
- (3) \* \* \* \* \* ; **or**
- (4) **Performance-based payments.**

\* \* \* \* \*

(d) Partial payments for accepted supplies and services that are only a part of the contract requirements are authorized under section 305 of the Federal Property and Administrative Services Act (41 U.S.C. 255) **and 10 U.S.C. 2307.** Although partial payments are generally treated as a method of payment and not as a method of contract financing, using partial payments can assist contractors to participate in Government contracts without, or with minimal, contract financing. When appropriate, agencies shall use this payment method.

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(f) Performance-based payments are contract financing payments made on the basis of—

- (1) Performance measured by objective, quantifiable methods;
  - (2) Accomplishment of defined events; or
  - (3) Other quantifiable measures of results.
- [FAC 90-33]

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**32.103 Progress payments under construction contracts.**

**~~32.103 Progress payments construction contracts.~~**

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
* * * * Retainage should not be used as a substitute for good contract management, and the contracting officers should not withhold funds without cause. * * * *	* * * * Retainage should not be used as a substitute for good contract management, and the contracting officer should not withhold funds without cause. * * * * [FAC 90-33]

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**32.104 Providing contract financing.**

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
* * * * *	* * * * * (c) Subject to specific agency regulations, the contracting officer may provided customary contract financing in accordance with 32.113, Unusual contract financing shall not be provided except as authorized in 32.114. (d) Unless otherwise authorized by agency regulation, contract financing may be provided for contracts with: (1) Small business concerns, when the contract price will be greater than the simplified acquisition threshold. (2) Other than small business concerns, when the contract price will be \$1 million or more, or for a group of contracts, whose prices are greater than the simplified acquisition threshold, that total \$1 million or more. [FAC 90-33]

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### 32.106 Order of preference.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>The contracting officer shall consider the following order of preference when a contractor requests contract financing, unless an exception would be in the Government's interest in a specific case:</p> <p>(a) * * * * *</p> <p>(b) <del>Progress payments based on costs at customary rates</del> (see 32.501-1).</p> <p>(c) * * * * *</p> <p>(d) <del>Progress payments based on costs with unusual terms</del> (see 32.501).</p> <p>(e) * * * * *</p>	<p>The contracting officer shall consider the following order of preference when a contractor requests contract financing, unless an exception would be in the Government's <b>best</b> interest in a specific case:</p> <p>(a) * * * * *</p> <p>(b) Customary <b>contract financing</b> (see 32.113).</p> <p>(c) * * * * *</p> <p>(d) Unusual <b>contract financing</b> (see 32.114).</p> <p>(e) * * * * *</p> <p>[FAC 90-33]</p>

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### 32.110 [Reserved] [FAC 90-33]

#### ~~32.110 Contract performance in foreign countries.~~

~~—(a) In applying the coverage of Part 32 to a contract performed partly or completely in a foreign country, the contracting officer shall give due consideration to the sovereignty, laws, and procedures of the country concerned and shall obtain legal advice as necessary. The legal advice may indicate a need for additional protective arrangements within the foreign jurisdiction or for deviations from the contract clauses prescribed in this part.~~

~~—(b) The contracting officer shall act as necessary to comply with applicable foreign laws, while providing the most effective protection of the Government's interest.~~

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### 32.111 Contract clauses for non-commercial purchases. [FAC 90-33]

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#### ~~32.111 Contract clauses.~~

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### 32.112 Payment of subcontractors under contracts for non-commercial items. [FAC 90-32]

#### 32.112-1 Subcontractor assertions of nonpayment.

(a) In accordance with Pub. L. 102-190, section 806(a)(4) as amended by Sections 2091 and 8105, Pub. L. 103-355, upon the assertion by a subcontractor or supplier of a Federal contractor that the subcontractor or supplier has not been paid in accordance with the payment terms of the subcontract, purchase order, or other agreement with the prime contractor, the contracting officer may determine—

(1) For a construction contract, whether the contractor has made—

(i) Progress payments to the subcontractor or supplier in compliance with chapter 39 of Title 31, United States Code (Prompt Payment Act);

(ii) Final payment to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor;

(2) For a contract other than construction, whether the contractor has made progress payments, final payments, or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor;

(3) For any contract, whether the contractor's certification of payment of a subcontractor or supplier accompanying its payment request to the Government is accurate.

(b) If, in making the determination in paragraphs (a)(1) and (2) of this subsection, the contracting officer finds the prime contractor is not in compliance, the contracting officer may—

(1) Encourage the contractor to make timely payment to the subcontractor or supplier; or

(2) If authorized by the applicable payment clauses, reduce or suspend progress payments to the contractor.

(c) If the contracting officer determines that a certification referred to in paragraph (a)(3) of this section is inaccurate in any material respect, the contracting officer shall initiate administrative or other remedial action.

#### **32.112-2 Subcontractor requests for information.**

(a) In accordance with Pub. L. 102-190, section 806(a)(1) as amended by Sections 2091 and 8105, Pub. L. 103-355, upon the request of a subcontractor or supplier under a Federal contract for a non-commercial item, the contracting officer shall promptly advise the subcontractor or supplier as to—

(1) Whether the prime contractor has submitted requests for progress payments or other payments to the Federal Government under the contract; and

(2) Whether final payment under the contract has been made by the Federal Government to the prime contractor.

(b) In accordance with 5 U.S.C. 552(b)(1), this subsection does not apply to matters that are—

(1) Specifically authorized under criteria established by an Executive order to be kept classified in the interest of national defense or foreign policy; and

(2) Properly classified pursuant to such Executive order.

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#### **32.113 Customary contract financing. [FAC 90-33]**

The following contract financing arrangements are customary contract financing when provided in accordance with this part and agency regulations:

(a) Financing of shipbuilding, or ship conversion, alteration, or repair, when agency regulations provide for progress payments based on a percentage or stage of completion;

(b) Financing of construction or architect-engineer services purchased under the authority of Part 36;

(c) Financing of contracts for supplies or services awarded under the sealed bid method of procurement in accordance with Part 14, or under the competitive negotiation method of procurement in accordance with Part 15, through progress payments based on costs in accordance with Subpart 32.5;

(d) Financing of contracts for supplies or services awarded under a sole-source acquisition as defined in Part 6 and using the procedures of Part 15, through either progress payments based on costs in accordance with Subpart 32.5, or performance-based payments in accordance with Subpart 32.10 (but not both). Performance-based payments are the preferred method when the contracting officer finds them practical, and the contractor agrees to their use.

(e) Financing of contracts for supplies or services through advance payments in accordance with Subpart 32.4;

(f) Financing of contracts for supplies or services through guaranteed loans in accordance with Subpart 32.3; or

(g) Financing of contracts for supplies or services through any appropriate combination of advance payments, guaranteed loans, and either performance-based payments or progress payments (but not both) in accordance with their respective subparts.



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**32.114 Unusual contract financing.** [FAC 90-33]

Any contract financing arrangement that deviates from this part is unusual contract financing. Unusual contract financing shall be authorized only after approval by the head of the agency or as provided for in agency regulations.

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**SUBPART 32.2—~~RESERVED~~**

**SUBPART 32.2—COMMERCIAL ITEM PURCHASE FINANCING**

[Subpart added by FAC 90-33]

**32.200 Scope of subpart.**

This subpart provides policies and procedures for commercial financing arrangements under commercial purchases pursuant to Part 12.

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**32.201 Statutory authority.**

10 U.S.C. 2307(f) and 41 U.S.C. 255(f) provide that payment for commercial items may be made under such terms and conditions as the head of the agency determines are appropriate or customary in the commercial marketplace and are in the best interest of the United States.

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**32.202 General.**

**32.202-1 Policy.**

(a) *Use of financing in contracts.* It is the responsibility of the contractor to provide all resources needed for performance of the contract. Thus, for purchases of commercial items, financing of the contract is normally the contractor's responsibility. However, in some markets the provision of financing by the buyer is a commercial practice. In these circumstances, the contracting officer may include appropriate financing terms in contracts for commercial purchases when doing so will be in the best interest of the Government.

(b) *Authorization.* Commercial interim payments and commercial advance payments may be made under the following circumstances—

- (1) The contract item financed is a commercial supply or service;
- (2) The contract price exceeds the simplified acquisition threshold at Part 13;
- (3) The contracting officer determines that it is appropriate or customary in the commercial marketplace to make financing payments for the item;
- (4) Authorizing this form of contract financing is in the best interest of the Government (see paragraph (e) of this subsection);
- (5) Adequate security is obtained (see 32.202-4);
- (6) Prior to any performance of work under the contract, the aggregate of commercial advance payments shall not exceed 15 percent of the contract price;
- (7) The contract is awarded on the basis of competitive procedures or, if only one offer is solicited, adequate consideration is obtained (based on the time value of the additional financing to be provided) if the financing is expected to be substantially more advantageous to the offeror than the offeror's normal method of customer financing; and
- (8) The contracting officer obtains concurrence from the payment office concerning liquidation provisions when required by 32.206(e).

(c) *Difference from non-commercial financing.* Government financing of commercial purchases under this subpart is expected to be different from that used for non-commercial purchases under Subpart 32.1 and its related subparts. While the contracting officer may adapt techniques and procedures from the non-commercial subparts for use in implementing commercial contract financing arrangements, the contracting officer must have a full understanding of effects of the differing contract environments and of what is needed to protect the interests of the Government in commercial contract financing.

(d) *Unusual contract financing.* Any contract financing arrangement not in accord with the requirements of agency regulations or this part is unusual contract financing and requires advance approval in accordance with agency procedures. If not otherwise specified, such unusual contract financing shall be approved by the head of the contracting activity.

(e) *Best interest of the Government.* The statutes cited in 32.201 do not allow contract financing by the Government unless it is in the best interest of the United States. Agencies may establish standards to determine whether contract financing is in the best interest of the Government. These standards may be for certain types of procurements, certain types of items, or certain dollar levels of procurements.

#### 32.202-2 Types of payments for commercial item purchases.

These definitions incorporate the requirements of the statutory commercial financing authority and the implementation of the Prompt Payment Act.

*Commercial advance payment* means a payment made before any performance of work under the contract. The aggregate of these payments shall not exceed 15 percent of the contract price. These payments are contract financing payments for prompt payment purposes (i.e., not subject to the interest penalty provisions of the Prompt Payment Act in accordance with Subpart 32.9). These payments are not subject to Subpart 32.4, Advance Payments for Non-Commercial Items.

*Commercial interim payment* means any payment that is not a commercial advance payment or a delivery payment. These payments are contract financing payments for prompt payment purposes (i.e., not subject to the interest penalty provisions of the Prompt Payment Act in accordance with Subpart 32.9). A commercial interim payment is given to the contractor after some work has been done, whereas a commercial advance payment is given to the contractor when no work has been done.

*Delivery payment* means a payment for accepted supplies or services, including payments for accepted partial deliveries. Commercial financing payments are liquidated by deduction from these payments. Delivery payments are invoice payments for prompt payment purposes.

#### 32.202-3 Conducting market research about financing terms.

Contract financing may be a subject included in the market research conducted in accordance with Part 10. If market research for contract financing is conducted, the contracting officer should consider—

- (a) The extent to which other buyers provide contract financing for purchases in that market;
- (b) The overall level of financing normally provided;
- (c) The amount or percentages of any payments equivalent to commercial advance payments (see 32.202-2);
- (d) The basis for any payments equivalent to commercial interim payments (see 32.202-2), as well as the frequency, and amounts or percentages; and
- (e) Methods of liquidation of contract financing payments and any special or unusual payment terms applicable to delivery payments (see 32.202-2).

#### 32.202-4 Security for Government financing.

(a) *Policy.* (1) 10 U.S.C. 2307(f) and 41 U.S.C. 255(f) require the Government to obtain adequate security for Government financing. The contracting officer shall specify in the solicitation the type of security the Government will accept. If the Government is willing to accept more than one form of security, the offeror shall be required to specify the form of security it will provide. If acceptable to the contracting officer, the resulting contract shall specify the security (see 32.206(b)(1)(iv)).

(2) Subject to agency regulations, the contracting officer may determine the offeror's financial condition to be adequate security, provided the offeror agrees to provide additional security should that financial condition become inadequate as security (see paragraph (c) of the clause at 52.232-29, Terms for Financing of Purchases of Commercial Items). Assessment of the contractor's financial condition shall consider both net worth and liquidity. If the contracting officer finds the offeror's financial condition is not adequate security, the contracting officer shall require other adequate security. Paragraphs (b), (c), and (d) of this subsection list other (but not all) forms of security that the contracting officer may find acceptable.

(3) The value of the security must be at least equal to the maximum unliquidated amount of contract financing payments to be made to the contractor. The value of security may be adjusted periodically during contract performance, as long as it is always equal to or greater than the amount of unliquidated financing.

(b) *Paramount lien.* (1) The statutes cited in 32.201 provide that if the Government's security is in the form of a lien, such lien is paramount to all other liens and is effective immediately upon the first payment, without filing, notice, or other action by the United States.

(2) When the Government's security is in the form of a lien, the contract shall specify what the lien is upon, e.g., the work in process, the contractor's plant, or the contractor's inventory. Contracting officers may be flexible in the choice of assets. The contract must also give the Government a right to verify the existence and value of the assets.

(3) Provision of Government financing shall be conditioned upon a contractor certification that the assets subject to the lien are free from any prior encumbrances. Prior liens may result from such things as capital equipment loans, installment purchases, working capital loans, various lines of credit, and revolving credit arrangements.

(c) *Other assets as security.* Contracting officers may consider the guidance at 28.203-2, 28.203-3, and 28.204 in determining which types of assets may be acceptable as security. For the purpose of applying the guidance in Part 28 to this subsection, the term "surety" and/or "individual surety" should be interpreted to mean "offeror" and/or "contractor".

(d) *Other forms of security.* Other acceptable forms of security include--

(1) An irrevocable letter of credit from a federally insured financial institution;

(2) A bond from a surety acceptable in accordance with Part 28 (note that the bond must guarantee repayment of the unliquidated contract financing);

(3) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership to the contractor; or,

(4) Title to identified contractor assets of adequate worth.

(e) *Management of risk and security.* In establishing contract financing terms, the contracting officer must be aware of certain risks. For example, very high amounts of financing early in the contract (front-end loading) may unduly increase the risk to the Government. The security and the amounts and timing of financing payments must be analyzed as a whole to determine whether the arrangement will be in the best interest of the Government.

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### 32.203 Determining contract financing terms.

When the criteria in 32.202-1(b) are met, the contracting officer may either specify the financing terms in the solicitation (see 32.204) or permit each offeror to propose its own customary financing terms (see 32.205). When the contracting officer has sufficient information on financing terms that are customary in the commercial marketplace for the item, those terms may be specified in the solicitation.

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**32.204 Procedures for contracting-officer-specified commercial contract financing.**

The financing terms shall be included in the solicitation. Contract financing shall not be a factor in the evaluation of resulting proposals, and proposals of alternative financing terms shall not be accepted (but see 14.208 and 15.606 concerning amendments of solicitations). However, an offer stating that the contracting officer-specified contract financing terms will not be used by the offeror does not alter the evaluation of the offer, nor does it render the offer nonresponsive or otherwise unacceptable. In the event of award to an offeror who declined the proposed contract financing, the contract financing provisions shall not be included in the resulting contract. Contract financing shall not be a basis for adjusting offerors' proposed prices because the effect of contract financing is reflected in each offeror's proposed prices.

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**32.205 Procedures for offeror-proposed commercial contract financing.**

(a) Under this procedure, each offeror may propose financing terms. The contracting officer must then determine which offer is in the best interests of the United States.

(b) *Solicitations.* The contracting officer shall include in the solicitation the provision at 52.232-31, Invitation to Propose Financing Terms. The contracting officer shall also—

(1) Specify the delivery payment (invoice) dates that will be used in the evaluation of financing proposals; and

(2) Specify the interest rate to be used in the evaluation of financing proposals (see paragraph (c)(4) of this section).

(c) *Evaluation of proposals.* (1) When contract financing terms vary among offerors, the contracting officer must adjust each proposed price for evaluation purposes to reflect the cost of providing the proposed financing in order to determine the total cost to the Government of that particular combination of price and financing.

(2) Contract financing results in the Government making payments earlier than it otherwise would. In order to determine the cost to the Government of making payments earlier, the contracting officer must compute the imputed cost of those financing payments and add it to the proposed price to determine the evaluated price for each offeror.

(3) The imputed cost of a single financing payment is the amount of the payment multiplied by the annual interest rate, multiplied by the number of years or fraction thereof between the date of the financing payment and the date the amount would have been paid as a delivery payment. The imputed cost of financing is the sum of the imputed costs of each of the financing payments.

(4) The time value of proposal-specified contract financing arrangements shall be calculated using as the interest rate the Nominal Discount Rate specified in Appendix C of OMB Circular A-94, "Benefit-Cost Analysis of Federal Programs; Guidelines and Discounts", appropriate to the period of contract financing. Where the period of proposed financing does not match the periods in the OMB Circular, the interest rate for the period closest to the finance period shall be used. Appendix C is updated yearly, and is available from the Office of Economic Policy in the Office of Management and Budget (OMB).

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**32.206 Solicitation provisions and contract clauses.**

(a) The contract shall contain the paragraph entitled "Payment" of the clause at 52.212-4, Contract Terms and Conditions—Commercial Items. If the contract will provide for contract financing, the contracting officer shall construct a solicitation provision and contract clause. This solicitation provision shall be constructed in accordance with 32.204 or 32.205. If the procedure at 32.205 is used, the solicitation provision at 52.232-31, Invitation to Propose Financing Terms, shall be included. The contract clause shall be constructed in accordance with the requirements of this subpart and any agency regulations.

(b) Each contract financing clause shall include:

(1) A description of the—

- (i) Computation of the financing payment amounts (see paragraph (c) of this section);
- (ii) Specific conditions of contractor entitlement to those financing payments (see paragraph (c) of this section);
- (iii) Liquidation of those financing payments by delivery payments (see paragraph (e) of this section);
- (iv) Security the contractor will provide for financing payments and any terms or conditions specifically applicable thereto (see 32.202-4); and
- (v) Frequency, form, and any additional content of the contractor's request for financing payment (in addition to the requirements of the clause at 52.232-29, Terms for Financing of Purchases of Commercial Items); and

(2) Unless agency regulations authorize alterations, the unaltered text of the clause at 52.232-29, Terms for Financing of Purchases of Commercial Items.

(c) *Computation of amounts, and contractor entitlement provisions.* (1) Contracts shall provide that delivery payments shall be made only for completed supplies and services accepted by the Government in accordance with the terms of the contract. Contracts may provide for commercial advance and commercial interim payments based upon a wide variety of bases, including (but not limited to) achievement or occurrence of specified events, the passage of time, or specified times prior to the delivery date(s). The basis for payment must be objectively determinable. The clause written by the contracting officer shall specify, to the extent access is necessary, the information and/or facilities to which the Government shall have access for the purpose of verifying the contractor's entitlement to payment of contract financing.

(2) If the contract is awarded using the offeror-proposed procedure at 32.205, the clause constructed by the contracting officer under paragraph (b)(1) of this section shall contain the following:

(i) A statement that the offeror's proposed listing of earliest times and greatest amounts of projected financing payments submitted in accordance with paragraph (d)(2) of the provision at 52.232-31, Invitation to Propose Financing Terms, is incorporated into the contract; and

(ii) A statement that financing payments shall be made in the lesser amount and on the later of the date due in accordance with the financing terms of the contract, or in the amount and on the date projected in the listing of earliest times and greatest amounts incorporated in the contract.

(3) If the security accepted by the contracting officer is the contractor's financial condition, the contracting officer shall incorporate in the clause constructed under paragraph (b)(1) of this section the following—

(i) A statement that the contractor's financial condition has been accepted as adequate security for commercial financing payments; and

(ii) A statement that the contracting officer may exercise the Government's rights to require other security under paragraph (c), Security for Government Financing, of the clause at 52.232-29, Terms for Financing of Purchases of Commercial Items, in the event the contractor's financial condition changes and is found not to be adequate security.

(d) *Instructions for multiple appropriations.* If contract financing is to be computed for the contract, as a whole, and if there is more than one appropriation account (or subaccount) funding payments under the contract, the contracting officer shall include, in the contract instructions for distribution of financing payments to the respective funds accounts. Distribution instructions and contract liquidation instructions must be mutually consistent.

(e) *Liquidation.* Liquidation of contract financing payments shall be on the same basis as the computation of contract financing payments; that is, financing payments computed on a whole contract basis shall be liquidated on a whole contract basis; and a payment computed on a line item basis shall be liquidated against that line item. If liquidation is on a whole contract basis, the contracting officer shall use a uniform liquidation percentage as the liquidation method, unless the contracting officer obtains the concurrence of the cognizant payment office that the proposed liquidation provisions can be executed by that office, or unless agency regulations provide alternative liquidation methods.

(f) *Prompt payment for commercial purchase payments.* The provisions of Subpart 32.9, Prompt Payment, apply to contract financing and invoice payments for commercial purchases in the same manner they apply to non-commercial purchases. The contracting officer is responsible for including in the contract all the information necessary to implement prompt payment. In particular, contracting officers must be careful to clearly differentiate in the contract between contract financing and invoice payments and between items having different prompt payment times.

(g) *Installment payment financing for commercial items.* Contracting officers may insert the clause at 52.232-30, Installment Payments for Commercial Items, in solicitations and contracts in lieu of constructing a specific clause in accordance with paragraphs (b) through (e) of this section, if the contract action qualifies under the criteria at 32.202-1(b) and installment payments for the item are either customary or are authorized in accordance with agency procedures.

(1) *Description.* Installment payment financing is payment by the Government to a contractor of a fixed number of equal interim financing payments prior to delivery and acceptance of a contract item. The installment payment arrangement is designed to reduce administrative costs. However, if a contract will have a large number of deliveries, the administrative costs may increase to the point where installment payments are not in the best interests of the Government.

(2) *Authorized types of installment payment financing and rates.* Installment payments may be made using the clause at 52.232-30, Installment Payments for Commercial Items, either at the 70 percent financing rate cited in the clause or at a lower rate in accordance with agency procedures.

(3) *Calculating the amount of installment financing payments.* The contracting officer shall identify in the contract schedule those items for which installment payment financing is authorized. Monthly installment payment amounts are to be calculated by the contractor pursuant to the instructions in the contract clause only for items authorized to receive installment payment financing.

(4) *Liquidating installment payments.* If installment payments have been made for an item, the amount paid to the contractor upon acceptance of the item by the Government shall be reduced by the amount of installment payments made for the item. The contractor's request for final payment for each item is required to show this calculation.

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### 32.207 Administration and payment of commercial financing payments.

(a) *Responsibility.* The contracting officer responsible for administration of the contract shall be responsible for review and approval of contract financing requests.

(b) *Approval of financing requests.* Unless otherwise provided in agency regulations, or by agreement with the appropriate payment official:

(1) The contracting officer shall be responsible for receiving, approving, and transmitting all contract financing requests to the appropriate payment office; and

(2) Each approval shall specify the amount to be paid, necessary contractual information, and the account(s) (see 32.206(d)) to be charged for the payment.

(c) *Management of security.* After contract award, the contracting officer responsible for approving requests for financing payments shall be responsible for determining that the security continues to be adequate. If the contractor's financial condition is the Government's security, this contracting officer is also responsible for monitoring the contractor's financial condition.

## SUBPART 32.4—ADVANCE PAYMENTS

### SUBPART 32.4—ADVANCE PAYMENTS FOR NON-COMMERCIAL ITEMS

#### 32.400 Scope of subpart.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
This subpart provides policies and procedures for advance payments on prime contracts and subcontracts. It does not include policies and procedures for advance payments for the types of transactions listed in 32.404.	This subpart provides policies and procedures for advance payments on prime contracts and subcontracts. It does not include policies and procedures for advance payments for the types of transactions listed in 32.404. <b>This subpart does not apply to commercial advance payments, which are subject to Subpart 32.2.</b> [FAC 90-33]

#### 32.501-1 Customary progress payment rates.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>*****</p> <p>(d) In accordance with the Defense Procurement Improvement Act of 1986 (Pub. L. 99-145) and, for civilian agencies, <del>as a matter of policy</del>, progress payments are limited to 80 percent on work accomplished under undefinitized contract actions. A higher rate is not authorized under unusual progress payments or flexible progress payments for the undefinitized actions.</p>	<p>*****</p> <p>(d) In accordance with the Defense Procurement Improvement Act of 1986 (Pub. L. 99-145), <b>as amended</b>, and for civilian agencies, <b>in accordance with 41 U.S.C. 255, as amended</b>, progress payments are limited to 80 percent on work accomplished under undefinitized contract actions. A higher rate is not authorized under unusual progress payments or <b>other customary</b> progress payments for the undefinitized actions. [FAC 90-33]</p>

#### 32.501-4 [Reserved] [FAC 90-33]

#### 32.501-4 Consideration for progress payments.

~~—(a) There is no requirement for a separate consideration for providing progress payments or changing progress payment or liquidation rates, if coverage is included in the terms of the contract when awarded.~~

~~—(b) Occasionally, unanticipated circumstances arise during contract performance which, under the policies of this subpart, result in the contract being amended to provide progress payments. In such a case, adequate new consideration is required.~~

~~—(c) The contractor may provide the new consideration by monetary or nonmonetary means. A monetary consideration could be a reduction in the contract price. A nonmonetary consideration could be the incorporation of terms in the contract modification giving the Government a new and substantial benefit.~~

~~—(d) The fair and reasonable consideration should approximate as nearly as practicably ascertainable the amount by which the price would have been smaller had the Progress Payments clause been contained in the initial contract. In the absence of definite information on this point, the contracting officer should apply the following criteria in evaluating whether the proposed new consideration is adequate:~~

~~—(1) The value to the contractor of the anticipated amount and duration of unliquidated progress payments at the imputed financial costs of the equivalent working capital.~~

~~—(2) The estimated profit rate to be earned through contract performance.~~

~~—(e) The contracting officer shall not provide for any other type of specific charges, such as interest, for progress payments.~~

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### 32.502-1 Use of customary progress payments.

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#### *FAR as of FAC 90-25*

\* \* \* \* \*

(a) Subject to paragraphs (b) ~~and (c) below~~, the contracting officer may provide for customary progress payments if the contractor (1) will not be able to bill for the first delivery of products, or other performance milestones, for a substantial time after work must begin (normally 4 months or more for small business concerns; 6 months or more for others), and (2) will make expenditures for contract performance during the predelivery period that have a significant impact on the contractor's working capital. Progress payments may also be authorized, particularly for small suppliers, if the contractor demonstrates actual financial need or the unavailability of private financing (see 32.106(a)).

(b) To reduce undue administrative effort and expense, the contracting officer ~~generally should not~~ provide for progress payments on contracts of less than \$1,000,000 unless—

(1) The contractor is a small business concern and the contract will ~~involve approximately \$100,000 or more; or~~

\* \* \* \* \*

~~—(c) The contracting officer shall not provide for progress payments if the contract items are quick turnover types for which progress payments are not a customary commercial practice. Examples of items customarily not subject to progress payments include (1) subsistence, (2) clothing, (3) medical and dental supplies, and (4) standard commercial items not requiring a substantial accumulation of predelivery expenditures by the contractor.~~

~~(d)~~(1) In considering whether to provide for progress payments in circumstances under which a series of orders are awarded (e.g., indefinite delivery contracts or basic ordering agreements contemplating requisitions, task orders, etc., or their equivalent), the contracting officer shall apply the standards in paragraphs (a) ~~through (c) above~~, based on—

\* \* \* \* \*

#### *FAR as revised*

\* \* \* \* \*

(a) Subject to paragraph (b) **of this subsection**, the contracting officer may provide for customary progress payments if the contractor (1) will not be able to bill for the first delivery of products, or other performance milestones, for a substantial time after work must begin (normally 4 months or more for small business concerns; 6 months or more for others), and (2) will make expenditures for contract performance during the predelivery period that have a significant impact on the contractor's working capital. Progress payments may also be authorized, particularly for small suppliers, if the contractor demonstrates actual financial need or the unavailability of private financing (see 32.106(a)). [FAC 90-33, CASE 94-764]

(b) To reduce undue administrative effort and expense, **unless otherwise provided in agency regulations**, the contracting officer **shall not** provide for progress payments on contracts of less than \$1 million unless—

(1) The contractor is a small business concern and the contract will **be equal to or greater than the simplified acquisition threshold; or**

\* \* \* \* \*

(c)(1) In considering whether to provide for progress payments in circumstances under which a series of orders are awarded (e.g., indefinite delivery contracts or basic ordering agreements contemplating requisitions, task orders, etc., or their equivalent), the contracting officer shall apply the standards in paragraphs (a) **and (b) of this subsection**, based on— [FAC 90-33]

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### 32.602 General.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>The contract debts covered in this subpart arise in various ways. The following are some examples: * * * * *</p>	<p>The contract debts covered in this subpart arise in various ways. The following are some examples: * * * * *</p> <p><b>(h) Reimbursement of costs, as provided in 33.102(b), 33.104(h)(1), and 33.105(g)(1), paid by the Government where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification. [FAC 90-32]</b></p>

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### 32.603 Applicability.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>Except as otherwise specified, this subpart applies to all debts to the Government arising in connection with contracts and subcontracts for the acquisition of supplies or services.</p>	<p>Except as otherwise specified, this subpart applies to all debts to the Government arising in connection with contracts and subcontracts for the acquisition of supplies or services, <b>and debts arising from the Government's payment of costs, as provided in 33.102(b), 33.104(h)(1), and 33.105(g)(1), where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification. [FAC 90-32]</b></p>

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### 32.605 Responsibilities and cooperation among Government officials.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>* * * * *</p> <p>(b) For most kinds of contract debts, the contracting officer has the primary responsibility for determining the amounts of and collecting contract debt. Under some agency procedures, however, the individual who is responsible for payment under the contract; e.g., the disbursing officer, may have this primary responsibility.</p>	<p>* * * * *</p> <p>(b) For most kinds of contract debts <b>including reimbursement of protest costs</b>, the contracting officer has the primary responsibility for determining the amounts of and collecting contract debt. Under some agency procedures, however, the individual who is responsible for payment under the contract; e.g., the disbursing officer, may have this primary responsibility. [FAC 90-32]</p>

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### 32.703-3 Contracts crossing fiscal years.

#### *FAR as of FAC 90-25*

A contract that is funded by annual appropriations may not cross fiscal years, except in accordance with statutory authorization (see 41 U.S.C. 11a, 31 U.S.C. 1308, and 42 U.S.C. 2459a), or when the contract calls for an end product that cannot feasibly be subdivided for separate performance in each fiscal year (e.g., contracts for expert or consultant services).

#### *FAR as revised*

(a) A contract that is funded by annual appropriations may not cross fiscal years, except in accordance with statutory authorization (see 41 U.S.C. 11a, 31 U.S.C. 1308, 42 U.S.C. 2459a and 41 U.S.C. 253I (see paragraph (b) of this section)), or when the contract calls for an end product that cannot feasibly be subdivided for separate performance in each fiscal year (e.g., contracts for expert or consultant services).

(b) 41 U.S.C. 253I, as amended by Section 1073 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355), authorizes heads of executive agencies other than the Department of Defense, United States Coast Guard, and the National Aeronautics and Space Administration (41 U.S.C. 252(a)(1)), to enter into a basic contract, options, or orders under that contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the basic contract, options or orders under that contract does not exceed one year each. Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority (see 37.106(b)). Consult agency supplements for similar authorities that may exist for the Department of Defense, United States Coast Guard, or the National Aeronautics and Space Administration.

[FAC 90-30]

### 32.801 Definitions.

#### *FAR as of FAC 90-25*

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“Designated agency,” as used in this subpart, means any agency authorized to include a no-setoff commitment in its contracts. The designated agencies are the Department of Defense, the General Services Administration, the National Aeronautics and Space Administration, the Federal Aviation Administration, and any other agency authorized by statute or designated by the President.

\* \* \* \*

#### *FAR as revised*

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“Designated agency,” as used in this subpart, means any **department or agency of the executive branch of the United States Government** (see **32.803(d)**)

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[FAC 90-33]

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### 32.803 Policies.

*FAR as of FAC 90-25*

\* \* \* \*

(d) ~~Each designated agency (see 32.801) may include a no-setoff commitment only in time of war or national emergency in any contract permitting the assignment of claims. In such times there should be special considerations to justify a determination that exclusion of a no-setoff commitment is in the Government's interest.~~

\* \* \* \*

*FAR as revised*

\* \* \* \*

(d) **Any contract of a designated agency (see 32.801), except a contract under which full payment has been made,** may include a no-setoff commitment only **when a determination of need is made by the President and after such determination has been published in the *Federal Register*.**

\* \* \* \* [FAC 90-33]

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### 32.806 Contract clauses.

*FAR as of FAC 90-25*

(a)(1) The contracting officer shall insert the clause at 52.232-23, Assignment of Claims, in solicitations and contracts ~~when the contract amount is expected to be \$1,000 or more~~, unless the contract will prohibit the assignment of claims (see 32.803(b)). The use of this clause is not required for purchase orders. However, the clause may be used in purchase orders ~~for \$1,000 or more~~ that are accepted in writing by the contractor, if such use is consistent with agency policies and regulations.

(2) ~~If a no-setoff commitment is to be included in the contract (see 32.801 and 32.803(d)) and the contract is expected to be for \$1,000 or more, the contracting officer shall use the clause with its Alternate I.~~

\* \* \* \*

*FAR as revised*

(a)(1) The contracting officer shall insert the clause at 52.232-23, Assignment of Claims, in solicitations and contracts **expected to exceed the micro-purchase threshold**, unless the contract will prohibit the assignment of claims (see 32.803(b)). The use of the clause is not required for purchase orders. However, the clause may be used in purchase orders **expected to exceed the micro-purchase threshold**, that are accepted in writing by the contractor, if such use is consistent with agency policies and regulations.

(2) If a no-setoff commitment has been **authorized by the President (see 32.801 and 32.803(d))**, the contracting officer shall use the clause with its Alternate I.

\* \* \* \* [FAC 90-33]

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## SUBPART 32.10—PERFORMANCE-BASED PAYMENTS

[Subpart added by FAC 90-33]

### 32.1000 Scope of subpart.

This subpart provides policy and procedures for performance-based payments under non-commercial purchases pursuant to Subpart 32.1. This subpart does not apply to—

- (a) Payments under cost-reimbursement contracts;
- (b) Contracts for architect-engineer services or construction, or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based upon a percentage or stage of completion;
- (c) Contracts for research or development; or
- (d) Contracts awarded through sealed bid or competitive negotiation procedures.

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### **32.1001 Policy.**

(a) Performance-based payments are contract financing payments that are not payment for accepted items.

(b) Performance-based payments are fully recoverable, in the same manner as progress payments, in the event of default. Except as provided in 32.1003(c), performance-based payments shall not be used when other forms of contract financing are provided.

(c) For Government accounting purposes, performance-based payments should be treated like progress payments based on costs under Subpart 32.5.

(d) Performance-based payments are contract financing payments and, therefore, are not subject to the interest-penalty provisions of prompt payment (see Subpart 32.9). However, these payments shall be made in accordance with the agency's policy for prompt payment of contract financing payments.

(e) Performance-based payments are the preferred financing method when the contracting officer finds them practical, and the contractor agrees to their use.

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### **32.1002 Bases for performance-based payments.**

Performance-based payments may be made on any of the following bases:

- (a) Performance measured by objective, quantifiable methods,
  - (b) Accomplishment of defined events, or
  - (c) Other quantifiable measures of results.
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### **32.1003 Criteria for use.**

Performance-based payments shall be used only if the following conditions are met:

- (a) The contracting officer and offeror are able to agree on the performance-based payment terms,
  - (b) The contract is a definitized fixed-price type contract (but see 32.1005(b)), and
  - (c) The contract does not provide for other methods of contract financing, except that advance payments in accordance with Subpart 32.4, or guaranteed loans in accordance with Subpart 32.3 may be used.
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### **32.1004 Procedure.**

Performance-based payments may be made either on a whole contract or on a deliverable item basis, unless otherwise prescribed by agency regulations. Financing payments to be made on a whole contract basis are applicable to the entire contract, and not to specific deliverable items. Financing payments to be made on a deliverable item basis are applicable to a specific individual deliverable item. (A deliverable item for these purposes is a separate item with a distinct unit price. Thus, a contract line item for 10 airplanes with a unit price of \$1,000,000 each, has ten deliverable items—the separate planes. A contract line item for 1 lot of 10 airplanes with a lot price of \$10,000,000, has only one deliverable item—the lot.)

(a) *Establishing performance bases.* (1) The basis for performance-based payments may be either specifically described events (*e.g.*, milestones), or some measurable criterion of performance. Each event or performance criterion that will trigger a finance payment shall be an integral and necessary part of contract performance and shall be identified in the contract, along with a description of what constitutes successful performance of the event or attainment of the performance criterion. The signing of contracts or modifications, the exercise of options, or other such actions shall not be events or criteria for performance-based payments. An event need not be a critical event in order to trigger a payment, but successful performance of each such event or performance criterion shall be readily verifiable.

(2) Events or criteria may be either severable or cumulative. The successful completion of a severable event or criterion is independent of the accomplishment of any other event or criterion. Conversely, the successful accomplishment of a cumulative event or criterion is dependent upon the previous accomplishment of another event. A contract may provide for more than one series of severable and/or cumulative performance events or criteria performed in parallel. The following shall be included in the contract:

(i) The contract shall not permit payment for a cumulative event or criterion until the dependent event or criterion has been successfully completed.

(ii) Severable events or criteria shall be specifically identified in the contract.

(iii) The contract shall identify which events or criteria are preconditions for the successful achievement of each cumulative event or criterion.

(iv) If payment of performance-based finance amounts is on a deliverable item basis, each event or performance criterion shall be part of the performance necessary for that deliverable item and shall be identified to a specific contract line item or subline item.

(b) *Establishing performance-based finance payment amounts.* (1) The contracting officer shall establish a complete, fully defined schedule of events or performance criteria and payment amounts when negotiating contract terms. If a contract action significantly affects the price, or event or performance criterion, the contracting officer responsible for pricing the contract modification shall adjust the performance-based payment schedule appropriately.

(2) Total performance-based payments shall not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis. The amount of each performance-based payment shall be specifically stated either as a dollar amount or as a percentage of a specifically identified price (e.g., contract price, or unit price of the deliverable item). The payment of contract financing has a cost to the Government in terms of interest paid by the Treasury to borrow funds to make the payment. Because the contracting officer has wide discretion as to the timing and amount of the performance-based payments, the contracting officer must ensure that the total contract price is fair and reasonable, all factors (including the financing costs to the Treasury of the performance-based payments) considered. Performance-based payment amounts may be established on any rational basis determined by the contracting officer, or agency procedures, which may include (but are not limited to) --

(i) Engineering estimates of stages of completion;

(ii) Engineering estimates of hours or other measures of effort to be expended in performance of an event, or achievement of a performance criterion; or

(iii) The estimated projected cost of performance of particular events.

(3) When subsequent contract modifications are issued, the performance-based payment schedule shall be adjusted as necessary to reflect the actions required by those contract modifications.

(c) *Instructions for multiple appropriations.* If there is more than one appropriation account (or subaccount) funding payments on the contract, the contracting officer shall provide instructions to the Government payment office for distribution of financing payments to the respective funds accounts. Distribution instructions must be consistent with the contract's liquidation provisions.

(d) *Liquidating performance-based finance payments.* Performance-based amounts shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payments. The contracting officer shall specify the liquidation rate or designated dollar amount in the contract. The method of liquidation shall ensure complete liquidation no later than final payment.

(1) If the performance-based payments are established on a delivery item basis, the liquidation amount for each line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount.

(2) If the performance-based finance payments are on a whole contract basis, liquidation shall be by predesignated liquidation amounts or liquidation percentages.

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**32.1005 Contract clauses.**

(a) If performance-based contract financing will be provided, the contracting officer shall insert the clause at 52.232-32, Performance-Based Payments, in the solicitation and contract with the description of the basis for payment and liquidation as required in 32.1004.

(b) In solicitations for undefinitized contracts, the contracting officer may include the clause at 52.232-32, Performance-Based Payments, with a provision that the clause is not effective until the contract is definitized and the performance-based payment schedule include din the contract.

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**32.1006 Agency approvals.**

The contracting officer shall obtain such approvals as are required by agency regulations.

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**32.1007 Administration and payment of performance-based payments.**

(a) *Responsibility.* The contracting officer responsible for administration of the contract shall be responsible for review and approval of performance-based payments.

(b) *Approval of financing requests.* Unless otherwise provided in agency regulations, or by agreement with the appropriate payment official—

(1) The contracting officer shall be responsible for receiving, approving, and transmitting all performance-based payment requests to the appropriate payment office; and

(2) Each approval shall specify the amount to be paid, necessary contractual information, and the appropriation account(s) (see 32.1004(c)) to be charged for the payment.

(c) *Reviews.* The contracting officer is responsible for determining what reviews are required for protection of the Government's interests. The contracting officer should consider the contractor's experience, performance record, reliability, financial strength, and the adequacy of controls established by the contractor for the administration of performance-based payments. Based upon the risk to the Government, post-payment reviews and verifications should normally be arranged as considered appropriate by the contracting officer. If considered necessary by the contracting officer, pre-payment reviews may be required.

(d) *Incomplete performance.* The contracting officer shall not approve a performance-based payment until the specified event or performance criterion has been successfully accomplished in accordance with the contract. If an event is cumulative, the contracting officer shall not approve the performance-based payment unless all identified preceding events or criteria are accomplished.

(e) *Government-caused delay.* Entitlement to a performance-based payment is solely on the basis of successful performance of the specified events or performance criteria. However, if there is a Government-caused delay, the contracting officer may renegotiate the performance-based payment schedule, to facilitate contractor billings for any successfully accomplished portions of the delayed event or criterion.

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**32.1008 Suspension or reduction of performance-based payments.**

The contracting officer shall apply the policy and procedures in paragraphs (a), (b), (c), and (e) of 32.503-6, Suspension or reduction of payments, whenever exercising the Government's rights to suspend or reduce performance-based payments in accordance with paragraph (e) of the clause at 52.232-32, Performance-Based Payments.

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**32.1009 Title.**

(a) Since the clause at 52.232-32, Performance-Based Payments, gives the Government title to the property described in paragraph (f) of the clause, the contracting officer must ensure that the Government title is not compromised by other encumbrances. Ordinarily, the contracting officer, in

the absence of reason to believe otherwise, may rely upon the contractor's certification contained in the payment request.

(b) If the contracting officer becomes aware of any arrangement or condition that would impair the Government's title to the property affected by the Performance-Based Payments clause, the contracting officer shall require additional protective provisions.

(c) The existence of any such encumbrance is a violation of the contractor's obligations under the contract, and the contracting officer may, if necessary, suspend or reduce payments under the terms of the Performance-Based Payments clause covering failure to comply with a material requirement of the contract. In addition, if the contractor fails to disclose an existing encumbrance in the certification, the contracting officer should consult with legal counsel concerning possible violation of 31 U.S.C. 3729, the False Claims Act.

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#### 32.1010 Risk of loss.

(a) Under the clause at 52.232-32, Performance-Based Payments, and except for normal spoilage, the contractor bears the risk for loss, theft, destruction, or damage to property affected by the clause, even though title is vested in the Government, unless the Government has expressly assumed this risk. The clauses prescribed in this regulation related to performance-based payments, default, and terminations do not constitute a Government assumption of risk.

(b) If a loss occurs in connection with property for which the contractor bears the risk and the property is needed for performance, the contractor is obligated to repay the Government the performance-based payments related to the property.

(c) The contractor is not obligated to pay for the loss of property for which the Government has assumed the risk of loss. However, a serious loss may impede the satisfactory progress of contract performance, so that the contracting officer may need to act under paragraph (e)(2) of the Performance-Based Payments clause. In addition, while the contractor is not required to repay previous performance-based payments in the event of a loss for which the Government has assumed the risk, such a loss may prevent the contractor from making the certification required by the Performance-Based Payments clause.

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#### 52.232-29 Terms for Financing of Purchases of Commercial Items.

As prescribed in 32.206(b)(2), insert the following clause:

##### TERMS FOR FINANCING OF PURCHASES OF COMMERCIAL ITEMS (OCT 1995)

(a) *Contractor entitlement to financing payments.* The contractor may request, and the Government shall pay, a contract financing payment as specified elsewhere in this contract when: the payment requested is properly due in accordance with this contract; the supplies deliverable or services due under the contract, will be delivered or performed in accordance with the contract; and there has been no impairment or diminution of the Government's security under this contract.

(b) *Special terms regarding termination for cause.* If this contract is terminated for cause, the Contractor shall, on demand, repay to the Government the amount of unliquidated contract financing payments. The Government shall be liable for no payment except as provided by the Termination for Cause paragraph of the clause at 52.212-4. Contract Terms and Conditions—Commercial Items.

(c) *Security for Government financing.* In the event the Contractor fails to provide adequate security, as required in this contract, no financing payment shall be made under this contract. Upon receipt of adequate security, financing payments shall be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the provisions for contract financing. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such

additional security, the Contracting Officer may collect or liquidate such security that has been provided and suspend further payments to the Contractor; and the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(d) *Reservation of rights.* (1) No payment or other action by the Government under this clause shall (i) excuse the Contractor from performance of obligations under this contract, or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause (i) shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(e) *Content of Contractor's request for financing payment term.* The Contractor's request for financing payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for financing payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made; and

(4) An appropriately itemized and totaled statement of the financing payments requested and such other information as is necessary for computation of the payment, prepared in accordance with the direction of the Contracting Officer.

(f) *Limitation on frequency of financing payments.* Contractor financing payments shall be provided no more frequently than monthly.

(g) In the event of any conflict between the terms proposed by the offeror in response to an invitation to propose financing terms (52.232-31) and the terms in this clause, the terms of this clause shall govern.

(End of clause)

#### 52.232-30 Installment Payments for Commercial Items.

As prescribed in 32.206(g), insert the following clause:

##### INSTALLMENT PAYMENTS FOR COMMERCIAL ITEMS (OCT 1995)

(a) *Contractor entitlement to financing payments.* The contractor may request, and the Government shall pay, a contract financing installment payment as specified in this contract when: the payment requested is properly due in accordance with this contract; the supplies deliverable or services due under the contract, will be delivered or performed in accordance with the contract; and there has been no impairment or diminution of the Government's security under this contract.

(b) *Computation of amounts.* Installment payment financing shall be paid to the Contractor when requested for each separately priced unit of supply (but not for services) of each contract line item in amounts approved by the Contracting Officer pursuant to this clause.

(1) *Number of installment payments for each contract line item.* Each separately priced unit of each contract line item is authorized a fixed number of monthly installment payments. The number of installment payments authorized for each unit of a contract line item is equal to the number of months from the date of contract award to the date one month before the first delivery of the first separately priced unit of the contract line item. For example, if the first scheduled delivery of any separately priced unit of a contract line item is 9 months after award of the contract, all separately priced units of that contract line item are authorized 8 installment payments.

(2) *Amount of each installment payment.* The amount of each installment payment for each separately priced unit of each contract line item is equal to 70 percent of the unit price divided by the number of installment payments authorized for that unit.

(3) *Date of each installment payment.* Installment payments for any particular separately priced unit of a contract line item begin the number of months prior to the delivery of that unit that are



equal to the number of installment payments authorized for that unit. For example, if 8 installment payments are authorized for each separately priced unit of a contract line item, the first installment payment for any particular unit of that contract line item would be 8 months before the scheduled delivery date for that unit. The last installment payment would be 1 month before scheduled delivery of a unit.

(4) *Limitation on payment.* Prior to the delivery payment for a separately priced unit of a contract line item, the sum of all installment payments for that unit shall not exceed 70 percent of the price of that unit.

(c) *Contractor request for installment payment.* The Contractor may submit requests for payment of installment payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all installment payments in any month for which payment is being requested shall be included in a single request, appropriately itemized and totaled.

(d) *Dates for payment.* An installment payment under this clause is a contract financing payment under the Prompt Payment clause of this contract, and except as provided in paragraph(e) of this clause, approved requests shall be paid within 30 days of submittal of a proper request for payment.

(e) *Liquidation of installment payments.* Installment payments shall be liquidated by deducting from the delivery payment of each item the total unliquidated amount of installment payments made for that separately priced unit of that contract line item. The liquidation amounts for each unit of each line item shall be clearly delineated in each request for delivery payment submitted by the Contractor.

(f) *Security for installment payment financing.* In the event the Contractor fails to provide adequate security as required in this contract, no financing payment shall be made under this contract. Upon receipt of adequate security, financing payments shall be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the contract. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided, and suspend further payments to the contractor; the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(g) *Special terms regarding termination for cause.* If this contract is terminated for cause, the Contractor shall, on demand, repay to the Government the amount of unliquidated installment payments. The Government shall be liable for no payment except as provided by the Termination for Cause paragraph of the clause at 52.212-4, Contract Terms and Conditions—Commercial Items.

(h) *Reservation of rights.* (1) No payment, vesting of title under this clause, or other action taken by the Government under this clause shall under this clause shall (i) excuse the Contractor from performance of obligations under this contract, or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause (i) shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract, and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(i) *Content of Contractor's request for installment payment.* The Contractor's request for installment payment shall contain the following:

- (1) The name and address of the Contractor;
- (2) The date of the request for installment payment;
- (3) The contract number and/or other identifier of the contract or order under which the request is made; and

(4) An itemized and totaled statement of the items, installment payment amount, and month for which payment is being requested, for each separately priced unit of each contract line item.

(End of clause)

**52.232-31 Invitation to Propose Financing Terms.**

As prescribed in 32.205(b) and 32.206, insert the following provision:

**INVITATION TO PROPOSE FINANCING TERMS (OCT 1995)**

(a) The offeror is invited to propose terms under which the Government shall make contract financing payments during contract performance. The financing terms proposed by the offeror shall be a factor in the evaluation of the offeror's proposal. The financing terms of the successful offeror and the clause, Terms for Financing of Purchases of Commercial Items, at 52.232-29, shall be incorporated in any resulting contract.

(b) The offeror agrees that in the event of any conflict between the terms proposed by the offeror and the terms in the clause at 52.232-29, Terms for Financing of Purchases of Commercial Items, the terms of the clause at 52.232-29 shall govern.

(c) Because of statutory limitations (10 U.S.C. 2307(f) and 41 U.S.C. 255(f)), the offeror's proposed financing shall not be acceptable if it does not conform to the following limitations:

(1) Delivery payments shall be made only for supplies delivered and accepted, or services rendered and accepted in accordance with the payment terms of this contract;

(2) Contract financing payments shall not exceed 15 percent of the contract price in advance of any performance of work under the contract,

(3) The terms and conditions of the contract financing must be appropriate or customary in the commercial marketplace; and

(4) The terms and conditions of the contract financing must be in the best interests of the United States.

(d) The offeror's proposal of financing terms shall include the following:

(1) The proposed contractual language describing the contract financing (see FAR 32.202-2 for appropriate definitions of types of payments); and

(2) A listing of the earliest date and greatest amount at which each contract financing payment may be payable and the amount of each delivery payment. Any resulting contract shall provide that no contract financing payment shall be made at any earlier date or in a greater amount than shown in the offeror's listing.

(e) The offeror's proposed prices and financing terms shall be evaluated to determine the cost to the United States of the proposal using the interest rate and delivery schedule specified elsewhere in this solicitation.

(End of provision)

**52.232-32 Performance-Based Payments.**

As prescribed in 32.1005, insert the following clause:

**PERFORMANCE-BASED PAYMENTS (OCT 1995)**

(a) *Amount of payments and limitations on payments.* Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and limitations on payments shall be specified in the contract's description of the basis for payment.

(b) *Contractor request for performance-based payment.* The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Contractor's request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.

(c) *Approval and payment of requests.* (1) The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contracting Officer shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contracting Officer may, at any

time, require the Contractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.

(2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract, and approved requests shall be paid in accordance with the prompt payment period and provisions specified for contract financing payments by that clause. However, if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquires into the status of an event or performance criterion, or into any of the conditions listed in paragraph (e) of this clause, or into the Contractor certification, payment is not required, and the prompt payment period shall not begin until the Contracting Officer approves the request.

(3) The approval by the Contracting Officer of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

(d) *Liquidation of performance-based payments.* (1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole contract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.

(2) If at any time the amount of payments under this contract exceeds any limitation in this contract, the Contractor shall repay to the Government the excess. Unless otherwise determined by the Contracting Officer, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

(e) *Reduction or suspension of performance-based payments.* The Contracting Officer may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the contract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (h) and (i) of this clause).

(2) Performance of this contract is endangered by the Contractor's (i) failure to make progress, or (ii) unsatisfactory financial condition.

(3) The Contractor is delinquent in payment of any subcontractor or supplier under this contract in the ordinary course of business.

(f)(1) *Title.* Title to the property described in this paragraph (f) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) *Property*, as used in this clause, includes all of the following described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices:

(i) Parts, materials, inventories, and work in process,

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract,

(iii) Nondurable (*i.e.*, noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (f)(2)(ii) of this clause, and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract, (*e.g.*, the termination or special tooling clauses), shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract, without requesting the Contracting Officer's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the Contracting Officer.

(5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(g) *Risk of loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. If any property is damaged, lost, stolen, or destroyed, the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(h) *Records and controls.* The Contractor shall maintain records and controls adequate for administration of this clause. The contractor shall have no entitlement to performance-based payments during any time the Contractor's records or controls are determined by the Contracting Officer to be inadequate for administration of this clause.

(i) *Reports and Government access.* The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Contracting Officer for the administration of this clause and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's records and to examine and verify the Contractor's performance of this contract for administration of this clause.

(j) *Special terms regarding default.* If this contract is terminated under the Default clause, (1) the Contractor shall, on demand, repay to the Government the amount of unliquidated performance-based payments, and (2) title shall vest in the Contractor, on full liquidation of all performance-based payments, for all property for which the Government elects not to require delivery under the Default clause of this contract. The Government shall be liable for no payment except as provided by the Default clause.

(k) *Reservation of rights.* (1) No payment or vesting of title under this clause shall (i) excuse the Contractor from performance of obligations under this contract, or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause (i) shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract, and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(l) *Content of Contractor's request for performance-based payment.* The Contractor's request for performance-based payment shall contain the following:

- (1) The name and address of the Contractor,
- (2) The date of the request for performance-based payment,
- (3) The contract number and/or other identifier of the contract or order under which the request is made,
- (4) Such information and documentation as is required by the contract's description of the basis for payment, and
- (5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (m).

(m) *Content of Contractor's certification.* As required in paragraph (l)(5) of this clause, the Contractor shall make the following certification in each request for performance-based payment:

**I certify to the best of my knowledge and belief that—**

**(1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the contract, and the instructions of the Contracting Officer;**

**(2) (Except as reported in writing on \_\_\_\_\_), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;**

**(3) There are no encumbrances (except as reported in writing on \_\_\_\_\_) against the property acquired or produced for, and allocated or properly chargeable to the contract which would affect or impair the Government's title;**

**(4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to the Government of the most recent written information dated \_\_\_\_\_ ; and**

**(5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.**

**(End of clause)**